

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PAMELA ANN SIMPSON,

Defendant-Appellant.

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UNPUBLISHED

June 14, 2007

No. 269689

Oakland Circuit Court

LC No. 2004-195058-FH

Before: Davis, P.J., and Hoekstra and Donofrio, JJ.

PER CURIAM.

Defendant was convicted by a jury of attempting to obtain a controlled substance, Vicodin, by fraud, MCL 333.7407(1)(c), and was sentenced to 273 days in jail, with credit for 22 days served. Defendant appeals her conviction as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant first argues that the trial court erred in denying her motion for a directed verdict. “When reviewing a trial court’s decision on a motion for a directed verdict, this Court reviews the record de novo to determine whether the evidence presented by the prosecutor, viewed in the light most favorable to the prosecutor, could persuade a rational trier of fact that the essential elements of the crime charged were proved beyond a reasonable doubt.” *People v Aldrich*, 246 Mich App 101, 122; 631 NW2d 67 (2001). See also *People v Werner*, 254 Mich App 528, 530; 659 NW2d 688 (2002).

To support a conviction for obtaining a controlled substance by fraud, the prosecutor must prove that (1) the substance at issue was a controlled substance, (2) the defendant knowingly or intentionally obtained possession of a controlled substance, (3) the defendant obtained the controlled substance by false prescription, and (4) the defendant knew the prescription was false. MCL 333.7407(1)(c); *People v Joseph*, 127 Mich App 78, 80-83; 338 NW2d 727 (1983). An attempt crime consists of an attempt to commit a crime prohibited by law and any act towards the commission of the intended crime. *People v Thousand*, 465 Mich 149, 161-162; 631 NW2d 694 (2001). “Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime.” *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000), quoting *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999).

During the prosecutor's case-in-chief, Dr. Mansour-Habib testified that defendant came into the Rochester Urgent Care clinic for treatment of an ear infection and a burn. Dr. Mansour-Habib prescribed three different medications for defendant's problems, none of which were the controlled substance Vicodin. Dr. Mansour-Habib recalled informing defendant of the various prescriptions and handing the prescription forms to her.

There was evidence that, shortly thereafter, defendant left the prescription forms with a pharmaceutical technician at the CVS pharmacy in Rochester Hills. The technician testified that defendant did not wait for the prescriptions to be filled. Rather, defendant said that her husband would pick them up later that evening. The technician took the prescription forms from defendant and left them at the drop-off counter for approximately 10 or 15 minutes before entering them into the computer. The technician explained that the prescriptions were only a few feet away from where she was sitting and that she did not see anybody remove or alter the prescriptions. She further explained that no customers could reach the area where the prescriptions were kept.

After noticing the portion on one of the forms prescribing 90 pills of Vicodin looked unusual, the technician took the form to the pharmacist. The pharmacist testified that the prescription for Vicodin "did not look right" to her because of the different handwriting, the different shade of the pen used, the lack of directions for use, the large quantity prescribed and the lack of a DEA number for the physician, which must accompany any prescription for a controlled substance. Accordingly, the pharmacist called the clinic to verify the authenticity of the prescription. Dr. Mansour-Habib reviewed both defendant's chart and a faxed copy of the prescription, and confirmed that she had not prescribed Vicodin for defendant and that the handwriting prescribing Vicodin was not hers.

Viewing the evidence in a light most favorable to the prosecution, there was sufficient evidence to permit a rational trier of fact to conclude that the material at issue – Vicodin – was a controlled substance and to infer that defendant knowingly or intentionally attempted to obtain possession of the controlled substance and knew that the prescription she gave to the pharmacy was false. See *Werner, supra* at 530. Accordingly, the trial court did not err in denying defendant's motion for a directed verdict.

Defendant also argues that her conviction was against the great weight of the evidence. To preserve for appeal a claim that a conviction was contrary to the great weight of the evidence, a defendant must raise the issue in a motion for a new trial, and where, as here, such a motion is lacking, our review is limited to plain error affecting the defendant's substantial rights. *People v Musser*, 259 Mich App 215, 218; 673 NW2d 800 (2003).

"The test to determine whether a verdict is against the great weight of the evidence is whether the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand." *Musser, supra* at 218-219, citing *People v McCray*, 245 Mich App 631, 637; 630 NW2d 633 (2001). "Circumstantial evidence and reasonable inferences that arise from the evidence can constitute sufficient proof of the elements of the crime." *People v Akins*, 259 Mich App 545, 554; 675 NW2d 863 (2003). Where testimony conflicts, it is the jury's function to determine the inferences to be drawn from the evidence and the weight to be given those inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002).

Moreover, it is the province of the jury to determine the credibility of witnesses. *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1998).

As discussed above, the prosecutor presented evidence that Dr. Mansour-Habib handed defendant prescription forms that did not contain Vicodin and, shortly thereafter, defendant dropped off a prescription for Vicodin at the CVS pharmacy. Defendant denied altering the prescription or having any knowledge that it had been changed. Defendant implied that someone else could have altered the prescription between the time that Dr. Mansour-Habib wrote it and the time that the pharmacy received it.

After viewing the evidence in its entirety, the jury found defendant guilty of attempting to obtain a controlled substance by fraud. Despite defendant's denial that she altered the prescription or knew that it had been altered, there was sufficient circumstantial evidence for the jury to find that defendant was guilty of the crime beyond a reasonable doubt. A rational trier of fact could have found defendant's story of (1) absentmindedly leaving the prescriptions in the waiting room after being seen by Dr. Mansour-Habib, (2) returning to the clinic after remembering she forgot a magazine in the examining room (but apparently not remembering the prescriptions left behind in the waiting room), and (3) seeing the prescription on a table when she returned for the magazine and snatching them up without looking at them to be incredible. Similarly, the jury could have found that defendant lacked veracity in claiming she never looked at the prescription forms after Dr. Mansour-Habib wrote them out. Because circumstantial evidence and inferences arising from that evidence can constitute sufficient proof of the crime, the evidence did not preponderate so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand. See *Musser, supra* at 218-219.

Affirmed.

/s/ Alton T. Davis  
/s/ Joel P. Hoekstra  
/s/ Pat M. Donofrio